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Insolvency 2025

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Italy: Law & Practice

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ITALY

Law and Practice

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Delfino e Associati Willkie Farr & Gallagher LLP is a law firm based in Milan and Rome, operating in association with Willkie Farr & Gallagher LLP in the areas of private equity and M&A, corporate restructuring and insolvency, corporate governance, Italian and international regulatory and compliance, banking and finance, litigation, employment law, taxation, and other practice areas.

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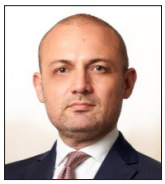

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STUDIO LEGALE DELFINO E ASSOCIATI
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1. Overview of Legal and Regulatory System for Insolvency/Restructuring/ Liquidation

1.1 Legal Framework

The principal laws applicable to Italian restructuring and insolvency are as follows.

- Legislative Decree 12 January 2019, No 14 (*Codice della Crisi d'impresa e dell'Insolvenza* – CCII) is the main Italian code governing business crisis, restructuring and insolvency procedures.
- Law 19 October 2017, No 155 is an enabling law empowering the government to implement a comprehensive reform of Italian insolvency law, including the introduction of the CCII.
- Legislative Decree 17 June 2022, No 83 implemented Directive (EU) 2019/1023 and introduced significant reforms to preventative restructuring tools, including creditor classes, cross-class cramdown, stays and protections for new financing.
- Decree-Law 30 April 2022, No 36, converted by Law 29 June 2022, No 79, set the date for the general entry into force of the CCII on 15 July 2022, and co-ordinated the reform with the implementation of EU restructuring legislation.
- Decree-Law 24 August 2021, No 118, converted by Law 21 October 2021, No 147, introduced the negotiated settlement of crisis (*composizione negoziata della crisi*) and the simplified composition with creditors (*concordato semplificato*).
- Decree-Law 8 April 2020, No 23, converted by Law 5 June 2020, No 40 (*Decreto Liquidità*), introduced COVID-19 emergency measures and postponed the entry into force of the CCII.
- Legislative Decree 8 July 1999, No 270 (*Prodi bis*) introduced an extraordinary administration procedure for large insolvent enterprises, aimed at preserving business continuity and business value.
- Decree-Law 23 December 2003, No 347, converted by Law 18 February 2004, No 39 (*Legge Marzano*), introduced a special fast-track extraordinary administration procedure for very large or strategic enterprises.
- Legislative Decree 1 September 1993, No 385 (*Testo Unico Bancario* – TUB) implements a special crisis management and insolvency regime for banks and banking groups.
- Legislative Decree 7 September 2005, No 209 (*Codice delle Assicurazioni Private* – CAP) implements a special insolvency and administrative liquidation regime for insurance companies.
- Law 31 May 1995, No 218 is an Italian private international law statute governing jurisdiction, applicable law, and the recognition and enforcement of foreign judgments and proceedings in Italy.
- *Regio Decreto* 16 March 1942, No 267 (*Legge Fallimentare*) is the former Italian bankruptcy law, which is still applicable to insolvency proceedings opened before the entry into force of the CCII.
- Directive (EU) 2019/1023 on preventative restructuring frameworks establishes EU rules on preventative restructuring, discharge of debt, and measures to increase the efficiency of restructuring and insolvency procedures.
- Regulation (EU) 2015/848 on insolvency proceedings governs the jurisdiction, recognition and co-ordination of cross-border insolvency proceedings within the European Union.
- Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 on harmonising certain aspects of insolvency law (including pre-pack proceedings), published in Official Journal L 799, 1.4.2026, introduces an EU-level framework for pre-pack sale procedures and related safeguards, to be transposed into national law by member states.

1.2 Types of Insolvency

Italian law provides for several types of insolvency and restructuring proceedings.

Out-of-Court Restructuring Tools

Out-of-court composition (composizione negoziata della crisi)

A flexible, private tool available to debtors experiencing financial distress or economic imbalance making crisis or insolvency likely, but in a context of business continuity. The procedure is mainly confidential and out-of-court, but it may become public if the debtor decides to request the intervention of the court, such as the stay of enforcement actions, the granting of protective measures, super-priority new financing and other relief measures provided by law.

Certified recovery plan (piano attestato di risanamento) (Article 56 CCII)
A private procedure that does not involve any judicial authority, aimed at sustaining the debtor during a period of recoverable financial tension.

Standstill agreements (Article 62 CCII)
Agreements between a debtor and its creditors, aimed at temporarily regulating the effects of the crisis.

In-Court Restructuring Tools

Debt restructuring agreements (Article 57 CCII)
A flexible tool allowing a distressed company to restructure its debt exposure with creditors representing at least 60% of the company's indebtedness, requiring court homologation. In certain circumstances, the court may also approve the plan despite the dissent of one or more classes of creditors (cross-class cram-down).

Restructuring plan subject to homologation (piano di ristrutturazione soggetto ad omologazione) (Article 64-bis CCII)
A new instrument allowing the distribution of restructuring proceeds contrary to the statutory order of priority of claims, subject to the consent of all creditors and the approval (homologation) of the court (no cross-class cram-down).

Composition with creditors (concordato preventivo) (Article 84 CCII)
An in-court procedure through which a distressed or insolvent debtor reaches a binding arrangement with all its creditors, including dissenting ones. In certain circumstances, court approval may also be obtained where the plan is approved by only one class of creditors, despite the dissent of the majority of the other classes (cross-class cram-down).

Simplified liquidation (concordato) (Article 25-sexies CCII)
A court-supervised, liquidation-only proceeding available solely when the negotiated composition has failed and no other tool is suitable. The court can confirm the plan without a creditors' vote.

Insolvency Procedures

Judicial liquidation (liquidazione giudiziale)
Available when the debtor is an entrepreneur or company carrying out commercial activity and is unable to regularly meet its obligations.

Extraordinary administration (Prodi bis procedure)
For large industrial and commercial enterprises demonstrating serious recovery prospects, applicable to debtors with at least 200 employees and debts equal to at least two thirds of assets and income.

Extraordinary administration (Marzano procedure)
For large insolvent companies with at least 500 employees and indebtedness amounting to at least EUR300 million.

1.3 Statutory Officers

The main statutory officers under Italian insolvency law include the following.

- Statutory auditors (*collegio sindacale*)
  - (a) Role: corporate oversight and early warning; can urge activation of out-of-court tools and in specific circumstances may file for a judicial liquidation (insolvency proceedings).
  - (b) Interaction: notify directors of distress and request timely measures.
  - (c) Appointment: by shareholders under corporate law.
- Negotiated composition expert (*esperto della composizione negoziata della crisi*)
  - (a) Role: neutral facilitator for out-of-court restructuring; assesses viability and steers creditor talks.
  - (b) Interaction: debtor's directors remain in control; expert promotes transparency and good faith.
  - (c) Appointment: selected by a Chamber of Commerce commission (CCIAA).
- Independent attestor/certifier (*attestatore*)
  - (a) Role: certifies the truthfulness of data and feasibility of plans (eg, certified recovery plan, debt restructuring agreement, restructuring plan subject to homologation, standstill agreements, composition with creditors).
  - (b) Interaction: works with debtor/advisers; provides assurance to court and creditors.

(c) Appointment: chosen by the debtor from among qualified, independent professionals.
- Delegated/supervisory judge (*giudice delegato*)
  (a) Role: oversees proceedings, authorises key acts, directs officers.
  (b) Interaction: receives reports/requests from officers and issues orders.
  (c) Appointment: designated by the competent court.
- Judicial commissioner (*commissario giudiziale*)
  (a) Role: supervises debtor in in-court restructuring (eg, composition with creditors, and sometimes over the homologation process of a debt restructuring agreement or restructuring plan subject to homologation); monitors feasibility and conduct.
  (b) Interaction: debtor-in-possession for ordinary business; extraordinary acts need authorisation.
  (c) Appointment: court-appointed; may be replaced by the court.
- Auxiliary (*ausiliario*)
  (a) Role: court-appointed assistant in the simplified liquidation *concordato*; verifies data, monitors plan execution and asset sales, and supports the judge's assessments.
  (b) Interaction: does not manage the debtor's business; reports to the court.
  (c) Appointment: appointed by the court (under Article 68 of the Code of Civil Procedure) when needed.
- Receiver (*curatore*)
  (a) Role: replaces management; manages the judicial liquidation, including claims verification, liquidation plan, competitive sales, distributions, and actions against creditors or former directors or statutory auditors.
  (b) Interaction: directors are displaced; actions under the oversight of the judge/creditors' committee.
  (c) Appointment: court-appointed in the opening decree.
- Creditors' committee (*comitato dei creditori*)
  (a) Role: supervises the receiver/liquidator; issues required opinions (not mandatory and not binding).
  (b) Interaction: reviews major steps (sales, litigation, finance).
  (c) Appointment: court-appointed; typically three or five creditor members.
- Extraordinary commissioner (*commissario straordinario*)
  (a) Role: manages extraordinary administration for large enterprises; prepares recovery/disposal plan; periodic reporting.
  (b) Interaction: replaces management; operates business toward sale or reorganisation.
  (c) Appointment: appointed by the Ministry for Business and Made in Italy (MIMIT) following eligibility/insolvency verification.

2. Creditors

2.1 Types of Creditors

The main claims can be divided into the following categories.

Super-Senior Claims (Crediti Prededucibili)

Procedural/administration expenses and other debts granted pre-deduction by law or court (including authorised new money), provided that sufficient assets are available and subject to existing guarantees. Paid ahead of all others.

Claims Secured by Mortgage or Pledge

Satisfied from proceeds of the specific encumbered asset; any shortfall ranks unsecured.

Other Secured Claims (Crediti Privilegiati)

Statutory preferential claims (eg, employees, certain taxes) ranking ahead of unsecureds per the legal order of privileges.

Unsecured Claims (Chirografari)

All residual claims without security or privilege, including secured shortfalls; rank pari passu.

Shareholders'/Other Subordinated Claims

Contractually or legally subordinated (eg, shareholder loans); paid after unsecured and before equity, if at all.

2.2 Priority Claims in Restructuring and Insolvency Proceedings

Under Italy's CCII, recoveries follow a statutory waterfall, as outlined below.

Super-Senior Claims (Prededuzione)

These are claims granted priority by law or by court order over all other claims on unencumbered assets. They include court-authorised interim, bridge or new money financing, the fees of court-appointed officers and approved advisers, and necessary post-filing operating costs. They rank ahead of preferential and unsecured claims, but do not attach to or override a creditor's specific collateral.

Secured Claims (Mortgage/Pledge)

These are claims backed by in rem security (mortgages over real estate and pledges over movable assets or receivables) or by special statutory liens attached to specific assets. Secured creditors are repaid from the proceeds of the sale of the encumbered asset ahead of other creditors; if the proceeds are insufficient, the unpaid balance ranks as an ordinary unsecured claim.

Privileged Claims (Crediti Privilegiati)

Privileges arise purely by statute and can be "special" (priority over specific assets) or "general" (over the debtor's movables). Typical examples include employee wages and severance (TFR), social security contributions, and certain tax claims. Privileged creditors are satisfied after super-senior expenses but before ordinary unsecured creditors, and the exact order of privileges follows the statutory ranking between special and general liens.

Unsecured Claims (Chirografari)

This residual category captures all claims without security or privilege, including the unsecured shortfall of formerly secured debts. Unsecured creditors share pari passu in what remains after satisfying prededuction and privileges.

Subordinated/Shareholder Claims

Subordination can be contractual or can arise by law (notably for shareholder loans advanced in undercapitalisation/distress). These claims sit below ordinary unsecured claims and are paid only if a surplus remains.

2.3 Secured Creditors

The Italian legal system provides for various forms of guarantees over specific assets and/or over the whole of the debtor's property.

Types of Liens/Security by Asset Class

- Real estate: mortgage (*ipoteca immobiliare*) perfected by notarial deed and land-registry filing; rank follows the time of registration.
- Registered movables (ships, aircraft, vehicles): mortgage over registered movables, filed in the relevant public register.
- Tangible movables/inventory: possessory pledge (*pegno*) or non-possessory pledge (*pegno non possessorio*) over business assets/receivables; the non-possessory pledge is perfected in an electronic register and can cover revolving asset pools.
- Shares and equity interests: pledge over listed/dematerialised shares (book-entry/financial-collateral regime) or over unlisted shares/quotas (notarial deed; S.r.l. quotas require Companies Register filing; S.p.A. shares via share ledger/annotations).
- Receivables and bank accounts: pledge (with notice/control) or assignment by way of security (*cessione in garanzia*); common for trade receivables and cash-sweep accounts.
- IP and other intangibles (trade marks, patents, software): pledge with filing/annotation at the competent IP registers.
- Business/going-concern (*azienda*): pledge over the business (where components are identifiable); banks may also use the special lien under Article 46 of the TUB across specified asset classes.
- Statutory liens/privileges (*privilegi*): arise by law (eg, employees, taxes), not by contract, but impact priority in any enforcement or insolvency.

Enforcement Outside a Restructuring/Insolvency Context

- Mortgages and registered movable mortgages: judicial foreclosure (*pignoramento*) leading to court-supervised sale; proceeds applied to the secured claim by rank. Precautionary measures (seizure/injunctions) can preserve value pending sale.
- Possessory pledges: contractual out-of-court sale is typically permitted; *patto marciano* appropriation at fair value (independent valuation) if expressly agreed; otherwise court sale.
- Non-possessory pledges: statute allows out-of-court enforcement (sale or *marciano*-style appropriation) once default occurs; priority follows registration time.

- Shares/equity: enforcement via private sale or appropriation per the pledge agreement. For dematerialised securities/eligible parties, the Financial Collateral Directive regime permits close-out netting and rapid sale/appropriation without court involvement. S.r.l. quota transfers must be formalised for Companies Register updating.
- Receivables/accounts: upon notice, the pledgee/assignee collects directly; account-control/blocked-account undertakings and contractual set-off are standard.
- IP/intangibles: realisation by private sale or auction, with effectiveness and opposability ensured through registry annotations.
- Financial collateral: title transfer or pledge over financial instruments/cash benefits from expedited, non-judicial enforcement (sale, appropriation, close-out), subject to statutory conditions.
- Third-party guarantees/security: rights against guarantors and third-party security providers are enforceable independently and are not impaired by the debtor's situation outside formal proceedings.

Secured creditors are paid from their collateral proceeds; any shortfall ranks as unsecured against the debtor's residual estate. Priority versus other creditors depends on perfection/registration timing and any super-priority statutory claims.

2.4 Unsecured Creditors

Under Italian law, unsecured creditors (including trade creditors) are entitled to seek full payment of their receivables through ordinary civil law remedies where no restructuring or insolvency proceedings are pending. The most common remedies and rights available to unsecured creditors under Italian law are as follows.

Payment Order (Decreto Ingiuntivo)

Fast-track order based on written evidence; if unopposed, it becomes final and enforceable. Provisional enforceability may be granted from the outset. Notarial deeds, bills of exchange and cheques are enforceable titles without the need for a payment order. If opposed, proceedings convert into ordinary litigation.

Ordinary Civil Action

Used for disputed claims or where broader remedies are sought; the final judgment constitutes an enforceable title, and interim measures may be available during the proceedings.

Pre-Judgment Attachment (Sequestro Conservativo)

Conservatory freeze over assets, including third-party garnishments, subject to fumus boni iuris and periculum in mora; converts into enforcement once an enforceable title is obtained.

Judicial Enforcement (Pignoramento)

Once an enforceable title is obtained, creditors may attach bank accounts, receivables owed by third parties, movable assets, real estate or equity interests through court-supervised enforcement proceedings.

Retention of Title (Vendita con Riserva di Proprietà)

Ownership transfers only upon full payment, subject to statutory formalities and the identifiability of goods.

Set-Off (Compensazione)

Mutual, due and liquid claims between the same parties extinguish up to the lower amount (legal set-off), subject to statutory limits and any contractual netting.

Assignment of Receivables/Assignment by Way of Security

Post-notice, the assignee/secured party may collect directly; common for trade receivables and cash-management/blocked-account structures.

Contractual Non-Payment Remedies

Suspension for non-performance (*exceptio inadempimenti*), price withholding/reduction where applicable, and termination for cause per contract/civil code (often with cure periods).

Late Payment Regime in Commercial Transactions

Statutory default interest and a fixed recovery fee apply to late B2B/public sector payments, enhancing collection leverage.

Defensive/Conservative Actions Outside Insolvency

Paulian action (*revocatoria ordinaria*) to challenge prejudicial acts; subrogation (*azione surrogatoria*) to exercise the debtor's rights against third parties.

Guarantees and Third-Party Security

Rights against guarantors and third-party security providers are generally independent and enforceable irrespective of the debtor's status outside formal proceedings.

3. Out-of-Court Restructuring

3.1 Out-of-Court Restructuring Process

In Italy, debt restructuring is, in principle, free: the debtor and its creditors may negotiate solutions without prescribed statutory templates or rigid formalities.

There are several out-of-court tools with their own features; however, both the instruments used and the outcome of the negotiations are generally flexible and consensual. Notwithstanding such flexibility, these processes typically involve certain key actors and structured steps, depending on the specific tool adopted.

In an out-of-court composition (*composizione negoziata della crisi*), the debtor must file an application with the competent Chamber of Commerce to initiate negotiations with selected creditors. Upon such filing, the Chamber of Commerce appoints an independent expert who facilitates and supports the negotiations, without replacing the debtor in the management of the process.

In a certified recovery plan (*piano attestato di risanamento*), the debtor is free to negotiate with any creditors it deems appropriate; however, any agreement reached must be supported by an industrial and financial plan, which is certified by an independent expert (*attestatore*) appointed by the debtor.

Similarly, in debt restructuring agreements (*accordi di ristrutturazione dei debiti*) and in restructuring plans subject to court approval, the debtor must appoint an independent expert to certify the feasibility and reasonableness of the plan. In these cases, court involvement is required in addition to the approval by the required statutory majorities (typically 60% of creditors for restructuring agreements, or unanimity in other cases), and the debtor must seek homologation (*omologazione*) of the plan and/or agreement.

The statutory auditors (*collegio sindacale*) serve as an early warning body: if they detect signs of distress, they must alert the board and request prompt remedial action. They do not run the restructuring, nor dictate outcomes.

Management remains responsible for business conduct and restructuring strategy, subject to the directors' duties of sound management and – if distress deepens – the duty to preserve assets and enterprise value primarily in creditors' interests.

Creditors – and financial institutions in particular – are expected to negotiate in good faith, maintain confidentiality and provide timely, reasoned responses to proposals. There is, however, no specific statutory sanction for refusing to participate or refusing to agree to the proposed terms.

Accordingly, out-of-court restructurings remain consensual unless the debtor accesses court-approved procedures that permit cram-down and/or the granting of protective or conservatory measures.

Shareholders have no decision-making power over the terms of an out-of-court restructuring and cannot impose conditions on creditors. Corporate governance rules continue to apply.

Once directors commence a formal crisis or insolvency proceeding under the Italian Insolvency Code, shareholders may remove directors only for just cause, and such removal is subject to court approval.

This limitation does not apply to the out-of-court negotiated composition (c *omposizione negoziata della crisi*), which is not classified as a judicial insolvency or restructuring proceeding. In that framework, ordinary corporate governance remains in place, while all participants – including the debtor, creditors and other stakeholders – are subject to statutory duties of co-operation, fairness, confidentiality and timely, reasoned engagement during the negotiations.

3.2 Legal Status

An out-of-court restructuring in Italy is a private, contract-based workout, except in specific situations where the debtor involves the court. As a general rule,

it has no universal (erga omnes) effect: it binds only the parties that sign it and does not, by itself, create a stay, alter third parties' rights, or produce res judicata effects. It is therefore binding only on the consenting creditors and the debtor (and any other parties that expressly accede to the agreement, such as guarantors, sureties or security providers). Third parties are not bound unless they sign the agreement or unless a specific statutory mechanism extends the effects within a class of creditors.

Only standstill agreements (*convenzioni di moratoria*) and debt restructuring agreements (*accordi di ristrutturazione dei debiti*), in specific circumstances, may be extended to non-adhering creditors within the same category if the required statutory majorities are met, or to the Tax Authorities where their consent is necessary to obtain court approval.

In summary, out-of-court restructurings are consensual and party-specific; effects against non-consenting creditors arise only through limited statutory extensions or court approval (including cram-down in the context of a debt restructuring agreement).

4. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

4.1 Opening of Statutory Restructuring, Rehabilitation and Reorganisation

Under Article 40 of the CCII, the debtor initiates crisis and insolvency proceedings by filing a petition specifying the competent court, subject matter, grounds and conclusions. Other parties participate in the process, including the court, independent experts (*attestatori*) and creditors.

The CCII extends pre-petition rules to all restructuring tools. Pursuant to Article 44, the debtor may initially file limited documents, reserving the right to submit the final proposal, plan or agreements. The court sets a filing deadline of 30–60 days, extendable by up to 60 additional days for justified reasons, provided no judicial liquidation application has been submitted.

Possible outcomes include:

- court approval (*omologazione*) of a debt restructuring agreement, requiring 60% creditor approval per class, with potential cram-down on dissenting creditors or the Tax Authorities;
- restructuring plan subject to homologation, requiring unanimous class approval; or
- composition with creditors (*concordato preventivo*), which may now be approved even if only one class votes in favour, provided statutory requirements are met.

During the pre-petition and petition stages, the debtor may request protective measures to preserve assets and enterprise value, including the suspension of enforcement actions against the debtor, guarantors or third parties.

Petitions must include financial statements, creditor lists, asset/liability schedules and, where required, an independent expert's feasibility report.

Under Articles 284–286 of the CCII, group companies in crisis or insolvency with their centre of main interests in Italy may file a joint application using a single or interconnected plans. The application must justify the group-wide approach over individual plans and detail the group's structure, participatory links and contractual relationships, enabling co-ordinated solutions while respecting operational and creditor interests.

4.2 Statutory Restructuring, Rehabilitation and Reorganisation Procedure

Certified Recovery Plan (Piano Attestato di Risanamento) (Article 56 CCII)

This is a fully private, out-of-court tool for a debtor in reversible financial stress, aimed at rebalancing debt and preserving the business as a going concern. It is negotiated with selected creditors and binds only adherents; non-adherents are unaffected.

An independent expert certifies data accuracy and plan feasibility.

If insolvency later occurs, the plan can shield covered acts from claw-back, absent wilful misconduct or gross negligence. The debtor keeps full management powers; there is no automatic stay, no super-senior financing, and no court supervision. Directors remain

subject to ordinary duties, although proper implementation may reduce exposure to certain civil and criminal claims. Without court approval, claw-back protection may be challenged ex post if a court finds that the plan was not feasible when certified. Filing with the Companies Register is optional and may bring tax benefits.

Debt Restructuring Agreements (Accordi di Ristrutturazione dei Debiti, or ADR) (Article 57 CCII)

Such agreement is negotiated out of court and then court-homologated, and is usable for going-concern restructuring or orderly liquidation. It requires creditors holding at least 60% of total claims and generally binds only adherents; non-adherents are unaffected except as provided by Article 61 (extended effectiveness). Under the separate "facilitated ADR" (Article 60), the threshold may fall to 30% if the debtor waives the 120-day moratorium for non-adherents and does not seek protective measures (a feature of Article 60, not Article 57).

Protective/conservatory measures may support an ADR, including during negotiations before the homologation filing, subject to Article 54 requirements. Corporate actions needed for implementation (by-law amendments, capital measures, M&A) can be included and become effective upon homologation, even overriding shareholder veto, via CCII cross-references to Article 116. Even with extended effects, creditors generally retain rights against co-obligors/guarantors; third-party releases require specific consent or tailored statutory/contractual terms.

ADR With Extended Effectiveness (Article 61 CCII)

Creditors may be grouped into classes by homogeneous legal position and economic interest. If adherents within a class hold at least 75% of that class's claims (60% if the ADR follows a successful *composizione negoziata della crisi*), the treatment may be extended to non-adherents in the same class (intra-class cram-down). All class members must be informed and enabled to participate in good faith. Non-adherents must receive at least liquidation value.

Equity does not "vote" in ADRs; however, plan corporate measures may take effect upon homologation via the referral to Article 116. Extension does not itself discharge co-obligors/guarantors: creditor rights against them remain unless expressly released or otherwise provided by law.

Restructuring Plan Subject to Homologation (Piano di Ristrutturazione Soggetto ad Omologazione, or PRO) (Article 64-bis CCII)

All creditors must be placed into classes. Homologation requires approval by all classes; the court reviews class formation and sets voting procedures. If an individual creditor objects, the court may still homologate if the creditor receives no less than in judicial liquidation (best-interest test).

The PRO provides no cross-class cram-down: under Article 64-bis, class unanimity is the baseline. Necessary corporate measures may be made effective upon homologation via the referral to Article 116, including equity "cram" where shareholders are out of the money and statutory safeguards apply. Approval does not automatically release third-party guarantees; if obligations are novated, guarantees generally require the guarantor's express consent to survive.

Composition With Creditors (Concordato Preventivo)

This in-court procedure binds all creditors (including dissenters), in going-concern or liquidating form, with an independent expert's attestation on data accuracy and feasibility. It requires statutory majorities and court homologation. Creditors are divided into classes: class unanimity is generally the rule, but the *concordato* may be approved with the favourable vote of just a single class. Within each class, approval requires a majority (or two-thirds if at least half of the creditors vote). The court verifies class criteria and governs voting. If a dissenting creditor objects, the court may still homologate if the creditor receives no less than in judicial liquidation.

Homologation can make effective the corporate actions needed to implement the plan (by-laws, capital measures, extraordinary transactions), preventing shareholder veto from blocking a viable restructuring. The *concordato* does not itself discharge third-party guarantors; claims against guarantors typically remain unless the guarantor consents.

The CCII provides no automatic stay upon filing. In the unitary proceeding, protective measures may be requested following publication of the application in the Companies Register.

Simplified Liquidation Composition (Concordato Liquidatorio Semplificato)

This court-led, liquidation-only procedure is available only after an unsuccessful *composizione negoziata della crisi*, based on the expert's final report. The debtor files a liquidation plan within the statutory window.

There is no creditors' vote and no traditional commissioner; the court appoints an *ausiliario* to review the proposal and assist the court. After filing and publication, the court sets the homologation hearing, circulates the proposal (with the *ausiliario* 's opinion and the expert's final report) to listed creditors, and may grant protective/precautionary measures upon request.

Objections may be filed up to ten days before the hearing. There is no minimum dividend for unsecured creditors and no mandatory external contribution.

Homologation is granted if:

- the procedure complies with law;
- the plan is feasible and respects statutory priorities; and
- no creditor is worse off than in judicial liquidation, with a specific utility allocated to each creditor.

If approved, it binds all pre-filing creditors. The court appoints a liquidator to run sales and distributions. The plan may pre-identify a buyer; the *ausiliario*/liquidator runs a simplified market test and, absent better offers, completes the transfer. Appeals are available within the short statutory term.

4.3 The End of the Restructuring, Rehabilitation and Reorganisation Procedure

Under the Italian Insolvency Code (CCII), the termination or completion of a restructuring, rehabilitation or reorganisation procedure depends on the specific tool used and whether the proposal, plan or agreement has been approved, rejected or otherwise implemented.

For a certified recovery plan (Article 56 of the CCII), the procedure concludes when the plan is certified by the independent expert; certification attests to the truthfulness of financial and accounting data and the feasibility of the restructuring. The plan binds only adhering creditors; non-adherents remain unaffected. Protective effects include exemption from claw-back actions and certain civil or criminal liabilities, provided there is no wilful misconduct or gross negligence by the debtor or expert. Unlike judicial procedures, there is no court review or homologation, and corporate actions embedded in the plan remain subject to the debtor's managerial discretion. Full implementation of the certified plan in good faith supports business continuity in a non-merely liquidatory manner.

For debt restructuring agreements (ADR), the procedure concludes when the court homologates the agreement. Approval requires adherence by creditors representing at least 60% of the relevant class of claims (or lower thresholds under the facilitated ADR, under Article 60, if applicable). Where extended effectiveness is sought under Article 61, the plan may be enforced (cram-down) against non-adhering creditors within the same class, provided they receive not less than liquidation value. The court ensures that the classification of creditors is correct and that participation has been conducted in good faith. Once homologated, the ADR becomes binding on all affected creditors, and corporate actions embedded in the plan – such as capital measures or by-law amendments – are made effective, notwithstanding any shareholder veto.

For restructuring plans subject to homologation (PRO), the procedure ends with court approval, which is granted if all creditor classes approve the plan, or if dissenting creditors are guaranteed payments at least equal to their liquidation value. The court evaluates class formation, voting procedures and the overall fairness of the plan (best interest test) before homologation. A PRO does not permit cross-class cram-downs, so unanimity of classes is generally required, and approval finalises the plan's implementation, including corporate measures.

For a composition with creditors, the procedure ends with the court's homologation of the plan. The plan may bind all creditors, including dissenters, if statu-

tory majority thresholds are met; under current rules, even the vote of a single class may suffice. The court assesses the credibility of financial data and feasibility, approves class structures, and may authorise corporate measures necessary to implement the plan. The approval of a composition with creditors ensures binding effect, and may enforce payments and actions to protect the business, while third-party guarantees persist unless expressly released.

For simplified liquidation composition, the process is available exclusively after an unsuccessful negotiated composition, based on the expert's final report.

The debtor files a liquidation plan within the statutory window. There is no creditors' vote, and the court appoints an *ausiliario* to review the proposal and assist the court rather than a classic commissioner. Upon filing and publication, the court schedules the homologation hearing, circulates the proposal (with the *ausiliario* 's opinion and expert's final report) to listed creditors, and may grant protective or precautionary measures on request.

Creditors and interested third parties may submit objections up to ten days before the hearing. Homologation is granted if the plan complies with law, is feasible, respects statutory priority, and ensures no creditor is worse off than in judicial liquidation.

If approved, it binds all pre-filing creditors. The court appoints a liquidator to implement sales and distributions. The plan may pre-identify buyers for the business, branches or assets, and the liquidator executes transfers following a simplified market test. Appeals against the homologation decree are available within the short statutory term.

4.4 The Position of the Debtor in Restructuring, Rehabilitation and Reorganisation

The consequences for the debtor's position and powers depend on the procedure selected. In short, where the debtor remains in possession, it manages the business subject to constraints and oversight; where a procedure office holder intervenes, management is limited or replaced. In every plan-based procedure, the debtor must perform and implement the measures set out in the approved/homologated plan.

Out-of-Court Composition (Composizione Negoziata Della Crisi)

The debtor retains full management and negotiates with selected categories of creditors, with the assistance of the expert. Without protective measures, there are no special constraints, and the debtor may also pay pre-existing debts to these creditors without limitation; other creditors may not even be informed. With protective measures, the business must be managed without prejudice to participating creditors and in compliance with reporting duties to the court. New finance may be obtained with super-priority (*prededuzione*) if authorised by the judge, when necessary to preserve continuity and protect creditors' interests.

Certified Recovery Plan (Piano Attestato di Risanamento)

This is an out-of-court tool in which the debtor retains full managerial autonomy, with no office holders and no court supervision. There are no legal restrictions on management acts; no stay of enforcement actions applies and no super-priority financing is available. The plan must be certified by an independent professional as to data truthfulness and feasibility; acts performed in execution of the certified recovery plan are protected from claw-back if the plan is properly certified. The debtor must faithfully carry out the measures set out in the certified recovery plan.

Debt Restructuring Agreements (Accordi di Ristrutturazione dei Debiti or ADR)

The debtor remains in possession and operates in accordance with the homologated agreement; any protective measures may impose conditions of transparency and propriety. New money provided and homologated benefits from super-priority and is protected from claw-back. The debtor is obligated to perform the commitments undertaken in the agreement.

Restructuring Plan Subject to Homologation (Piano di Ristrutturazione Soggetto ad Omologazione or PRO)

This CCII innovation allows distributions in accordance with the plan, even departing from statutory priorities, and shows strong affinities with the *concordato pre-*

ventivo. The debtor remains in possession but must act in the interests of creditors under the supervision of the judicial commissioner; extraordinary acts must be shared in advance and may be prevented. Classes must approve; in case of dissent, the court may nevertheless homologate if the treatment is not worse than judicial liquidation. Court-authorised interim finance is permitted, with super-priority. The debtor must implement the homologated plan.

Composition With Creditors (Concordato Preventivo)

A debtor-in-possession procedure, where the debtor manages the business while extraordinary transactions require authorisation from the delegated judge, and urgent acts must be promptly reported. Interim finance and plan-related financing may be authorised with super-priority if necessary to preserve business continuity and protect creditors' interests. The debtor cannot pay pre-existing creditors, except those deemed strategic or authorised by the court. The procedure is monitored by court-appointed commissioners (*commissari giudiziali*), who supervise and verify the execution of the plan both before and after homologation, providing a high level of oversight over the debtor's actions. After homologation, the debtor is required to implement the *concordato* plan in accordance with its terms.

Extraordinary Administration (Amministrazione Straordinaria Prodi Bis and Marzano)

This procedure applies to large insolvent enterprises whose going-concern preservation is of public interest. Under the *Prodi bis* framework (Legislative Decree No 270/1999), once admitted, the company's directors are removed and one or more extraordinary commissioners take over management. The business continues where compatible with the restructuring programme, with acts of extraordinary administration subject to authorisation and ongoing ministerial and supervisory oversight. The debtor's estate benefits from an automatic stay; contracts essential to continuity may be kept in force or transferred, and avoidance actions and liability actions are available. Court- or ministerial-authorised new money can be raised and typically enjoys super-priority (*prededuzione*) status.

The *Marzano* framework (Decree-Law No 347/2003, as converted) is a special route for very large groups of strategic or systemic relevance. It shares the core features of extraordinary administration (replacement of management by commissioners, stay of enforcement, continuation of business under a recovery or sale programme), but provides accelerated timelines and special tools to preserve going-concern value, including the possibility to transfer assets and contracts to a bridge company and to access state support measures where provided by law. In both regimes, the commissioners implement the approved programme; the former directors and shareholders no longer manage the enterprise.

Judicial Liquidation (Liquidazione Giudiziale)

The debtor loses control over the assets (dispossession) and cannot carry out dispositive acts; the business is managed/liquidated by the trustee. New finance is available only exceptionally if temporary continuation is authorised, with super-priority. There is no debtor execution plan, as the aim is liquidation.

4.5 The Position of Office Holders in Restructuring, Rehabilitation and Reorganisation

Under the Italian Insolvency Code (CCII), the position of office holders depends on the specific tool used by the debtor.

Out-of-Court Composition (Composizione Negoziata Della Crisi)

In this framework, an independent expert is appointed by the committee established at the competent Chamber of Commerce via the national platform (CCIAA); the expert is not a formal insolvency office holder. The expert facilitates negotiations between the debtor and creditors, checks the transparency and completeness of the information provided, makes proposals and operational recommendations, and flags any prejudicial conduct; the expert has no managerial or replacement powers vis-à-vis the directors. Where protective measures are granted, the court oversees the progress of negotiations; the expert supports information flows to the judiciary and may suggest conditions for the proper conduct of the negotiation process.

Certified Recovery Plan (Piano Attestato di Risanamento)

In this framework, a qualified independent professional is appointed as certifier, selected and engaged by the debtor; this is not a judicial office and does not interact with a court. The certifier attests to the truthfulness of the business data and the feasibility of the plan, without managerial powers or ongoing supervisory functions, and without replacing the directors. No judicial authority or delegated judge is involved.

Debt Restructuring Agreements (Accordi di Ristrutturazione dei Debiti)

As a rule, these agreements do not involve a managerial office holder. The plan certifier is selected and engaged by the debtor, and verifies the truthfulness of the data and the feasibility of the plan. The court may appoint an auxiliary or a Judicial Commissioner with limited monitoring functions to oversee compliance with conditions and to report irregularities, without replacing corporate management. Supervision is exercised by the court at homologation and, where applicable, in administering protective measures; a delegated judge is not normally envisaged.

Restructuring Plan Subject to Homologation (Piano di Ristrutturazione Soggetto ad Omologazione, or PRO)

In the PRO, the court appoints a Judicial Commissioner, by decree. The debtor remains in possession but must manage in the best interests of creditors, inform the Judicial Commissioner in advance of extraordinary acts, and comply with any objections raised by the commissioner (with referral to the court for remedial measures, including termination of the proceeding, in case of prejudicial conduct). Court-authorised interim financing may be granted super-priority. Oversight rests with the court.

Composition With Creditors (Concordato Preventivo)

In *concordato preventivo*, the supervising authority is the court, which appoints the delegated judge and the judicial commissioner; the creditors' committee, where constituted, is appointed by the delegated judge. The debtor operates within the ordinary course, while extraordinary transactions require prior court approval. The commissioner reviews the company books, reports to the court, oversees business continuity management, gives opinions on extraordinary transactions, conducts the review of proofs of claim, reports on plan feasibility and on the correctness of classification and treatment, and supervises post-homologation execution. The delegated judge authorises extraordinary acts and issues supervisory orders; the creditors' committee gives mandatory opinions on key transactions and can steer liquidation or going-concern choices.

Extraordinary Administration (Prodi Bis and Marzano)

In extraordinary administration, one or more extraordinary commissioners, appointed together with the supervisory committee by decree of the Ministry for Enterprise and Made in Italy (MIMIT), fully replace the directors. After a judicial phase in which the court verifies insolvency and admission criteria, the administrative phase begins: the Ministry appoints the commissioners, who must file a disposal or recovery programme for Ministry approval. During the procedure, operations may continue, priority is granted to claims incurred to run the business, and the commissioners can terminate or continue executory contracts, pursue liability and avoidance actions, and seek authorisations for extraordinary acts and new super-priority financing. The supervisory committee oversees the commissioners' work, while MIMIT exercises high-level oversight and issues required authorisations; for judicial measures the competent authority is the court, and there is no delegated judge. Under the *Marzano* regime, additional tools may include public support and transfers to a bridge company, with court confirmation of insolvency and Ministry primacy over supervision.

Judicial Liquidation

In judicial liquidation, the court is the supervising authority and appoints the delegated judge and the receiver; the creditors' committee is appointed by the delegated judge. The receiver takes possession of the assets (dispossession), administers and liquidates the estate, may temporarily continue the business if authorised (with management entrusted to the receiver), verifies and admits claims through the verification hearing, and makes distributions according to priorities; the receiver may obtain strictly necessary

financing with prior authorisation on a super-priority basis. Acts performed by the debtor after the opening (other than those carried out through the receiver) are ineffective against creditors, and the receiver decides whether to assume or terminate pending executory contracts subject to statutory rules. The delegated judge authorises the main acts and directs the proceedings, while the creditors' committee gives mandatory opinions and guides liquidation choices.

4.6 The Position of Shareholders and Creditors in Restructuring, Rehabilitation and Reorganisation

Under the Italian Insolvency Code (CCII), restructuring may occur out-of-court or through court-supervised proceedings. The system is debtor-driven and favours business continuity over liquidation.

Out-of-Court Restructuring

Out-of-court restructurings are contractual in nature, with no formal voting or class-based approval mechanism. Non-consenting creditors are generally not bound, unless statutory thresholds permit extension of the agreement's effects to dissenters. Before protective measures are granted, creditors may enforce their rights through attachments, foreclosure and similar remedies. Retention of title and set-off rights are generally preserved. However, the debtor may apply for court-ordered protective measures, which may suspend enforcement actions and, where necessary for the restructuring, extend to third-party guarantees, including those of shareholders or group companies.

Intercreditor agreements are recognised and enforceable, and are binding only on the parties thereto. Claims may be assigned under general civil law principles, becoming effective against the debtor upon notification or acceptance. Transfers may be restricted by intercreditor agreements or, in certain cases, by protective measures.

Court-Supervised Restructuring

In court-supervised proceedings, creditors are divided into classes and vote on the plan. Cram-down mechanisms allow approval notwithstanding dissenting classes. In *concordato preventivo*, approval may require only one favourable class vote; in simplified liquidation compositions, court approval may occur without any creditor vote if statutory requirements are met and the plan ensures a better outcome than liquidation. Once approved, the plan binds all creditors. There is no automatic stay. The debtor must apply for protective measures, which may suspend enforcement actions and extend to third-party guarantees where enforcement would undermine the restructuring. Pre-existing creditor rights remain but may be temporarily restricted. Claims may be transferred during proceedings, subject to notification requirements, contractual restrictions and any applicable protective measures. The company typically remains in possession, although extraordinary transactions may require court authorisation. Shareholders are economically subordinated to creditors and may retain value only if creditors receive at least liquidation value and the plan complies with the applicable priority rules.

Shareholders' Position

In out-of-court restructurings, shareholders retain formal corporate rights, although under the CCII director revocation resolutions are ineffective without just cause until plan approval (Article 120-bis of the CCII), except in *composizione negoziata della crisi*. In court-supervised proceedings, shareholders' powers are significantly limited, and the court may compel shareholders to facilitate the restructuring – for example, by permitting third-party investors to enter the capital structure. Throughout, shareholders remain economically subordinated to creditors.

5. Statutory Insolvency and Liquidation Procedures

5.1 The Different Types of Liquidation Procedure

Under Italian law, statutory insolvency and liquidation procedures are governed primarily by the Italian Insolvency Code (CCII). The system distinguishes between ordinary judicial liquidation for most commercial enterprises, extraordinary administration for large enterprises of significant economic or public interest, and special liquidation regimes for regulated sectors or non-corporate debtors. The main substantive requirement for opening any liquidation procedure is the debtor's insolvency, defined as the objective inability to meet obligations on a regular basis.

Judicial Liquidation (Liquidazione Giudiziale)

Judicial liquidation is the ordinary court-supervised liquidation procedure applicable to commercial enterprises and corporate entities that meet certain statutory size thresholds and are therefore subject to the CCII. It replaced the former bankruptcy procedure and represents the standard insolvency liquidation framework for business debtors. Enterprises below these thresholds, as well as individuals, are generally subject to separate over-indebtedness procedures.

The procedure may be initiated when the debtor is insolvent. Insolvency is assessed by the court based on both financial and operational indicators rather than merely on unpaid debts.

Petitions to open judicial liquidation may be filed by:

- the debtor itself;
- one or more creditors;
- the public prosecutor; or
- competent public authorities with statutory supervisory functions over the debtor.

There is no automatic statutory obligation to file within a set timeframe. Directors are expected to detect financial distress promptly and to take appropriate action; delay may expose them to civil or, in certain cases, criminal liability.

Upon declaration of opening, the court ascertains the debtor's insolvency and formally opens the procedure. The court appoints a delegated judge and a receiver (*curatore*), who take control of the debtor's assets, manage the liquidation process, and ensure compliance with statutory priorities. From that moment, the debtor is generally dispossessed of its assets, and individual enforcement actions by creditors are stayed, although stays are not automatic and must be requested from the court.

Extraordinary Administration (Amministrazione Straordinaria – Prodi Bis/Marzano)

Extraordinary administration is a special insolvency regime applicable to large corporate enterprises where the preservation of the business, employment or other strategic interests is considered to be of significant economic or public importance. Unlike judicial liquidation, this regime is restructuring-oriented and allows the business to continue operating under supervision while extraordinary commissioners implement a ministerially approved recovery or disposal programme.

Admission generally follows a two-step process. First, the court verifies insolvency and whether the enterprise meets the statutory size and eligibility thresholds. Second, the Ministry for Enterprise and Made in Italy (MIMIT) decides by decree whether to open the procedure and appoint extraordinary commissioners together with a supervisory committee.

The procedure is usually initiated by the debtor, although creditors or public authorities may trigger the judicial phase. Directors remain subject to duties to act prudently and in a timely manner in cases of financial distress.

Other Liquidation Regimes

In addition to judicial liquidation and extraordinary administration, Italian law provides special liquidation frameworks for certain categories of debtors and sectors. These include:

- compulsory administrative liquidation, which applies to regulated entities such as banks, insurance companies, financial intermediaries, co-operatives and other supervised institutions; and
- over-indebtedness procedures for individuals, which are separate from corporate insolvency rules.

These procedures are generally administered by the relevant public authorities rather than ordinary insolvency courts.

5.2 Course of the Liquidation Procedure

Judicial Liquidation

Opening and immediate consequences

The court declares liquidation, establishes insolvency and appoints a delegated judge and receiver, triggering publicity and stay of enforcement actions. The debtor loses control of assets; individual actions (including those of secured creditors) are channelled into the collective proceeding. Directors lose control but must co-operate, preserve records and assist the

receiver, remaining exposed to liability actions for prior conduct.

Roles, functions and powers

The receiver:

- takes possession of assets;
- manages the business only if authorised to preserve value;
- realises assets through competitive procedures;
- brings avoidance and liability actions against directors/auditors;
- manages litigation;
- distributes proceeds according to statutory priorities; and
- acts in the collective interest of creditors (*par condicio*).

The delegated judge supervises legality, authorises extraordinary acts (major sales, settlements) and conducts the verification hearing. The court decides disputes on claim status and ranking. The creditors' committee, if constituted, issues mandatory opinions.

Pending contracts and arbitration

Executory contracts do not terminate automatically. The receiver may assume or terminate unperformed bilateral contracts in the estate's interest. Automatic termination clauses for insolvency (ipso facto) are restricted. Pending litigation is stayed so the receiver may step in; arbitrations follow the same collective logic.

Claims verification

- Notice and filings: the court sets the verification hearing and deadline. Creditors file proofs of claim with documents; privileged creditors describe and evidence their security. Assignees, agents and trustees file relevant instruments; set-off positions are disclosed with underlying contracts.
- Review and hearing: the receiver proposes admission (full/partial, with ranking) or reasoned rejection. The delegated judge forms the statement of liabilities indicating admitted claims and rank (pre-deduction, privileged, unsecured).
- Late filings, challenges, effects: late claims may be admitted without unwinding prior distributions; very late claims participate only in residual assets. Challenges follow statutory deadlines. Only admitted claims participate in distributions. Post-opening interest on unsecured claims stops for distribution purposes; secured creditors may accrue within collateral value.

Liability actions

- Standing: the receiver may sue directors, auditors, de facto managers, controlling shareholders and others for breaches causing loss to the estate. Avoidance and liability actions may proceed in parallel.
- Authorisations and settlements: strategic settlements require delegated-judge authorisation (and committee opinion). Individual creditors retain standing only for direct, non-reflective damage.

Sales of assets, businesses and collateral

- Procedure: the receiver conducts sales – individual assets, business units or entire business – with delegated-judge authorisation and committee opinion. Competitive procedures are used to maximise value.
- Free-and-clear and lien treatment: purchasers acquire assets free of encumbrances to the extent permitted; pledges and mortgages attach to proceeds with their priority. Secured creditors are paid from net proceeds up to their admitted amount; any deficiency ranks unsecured.
- Contracts, permits and workforce: in going-concern sales, the receiver may seek assignment of essential contracts within statutory limits; labour law rules on business transfers apply. Public licences transfer where sector regulations permit.

Extraordinary Administration (Prodi Bis/Marzano)

Opening and immediate consequences

Admission is two-phase: the court verifies insolvency and size/public interest thresholds; MIMIT opens the procedure by decree, appointing extraordinary commissioners and a supervisory committee. Commissioners replace directors and manage the enterprise under a ministry-approved programme.

Roles, functions and powers

- Extraordinary commissioners: manage the enterprise to preserve value, implement the programme (restructuring or sale), bring avoidance and liability

actions, manage contracts and seek authorisations for extraordinary acts and new finance. Balance business continuity with creditor recoveries.
- Supervisory committee and MIMIT: the committee oversees commissioners; the Ministry exercises general supervision and authorises the programme. The insolvency court remains competent for creditor rights verification.

Pending contracts and arbitration

Commissioners may continue or terminate executory contracts consistently with the programme; ipso facto clause restrictions apply by cross-reference and case law. Arbitrations that would bypass the collective procedure do not continue unless the contract is assumed and the forum is programme-compatible.

Claims verification

Despite ministerial management, claims verification follows judicial liquidation procedure:

- court-set deadline and hearing;
- filings with security details;
- preliminary proposals;
- judicial admissions in the statement of liabilities;
- late-filing regime; and
- challenges.

Distributions follow the admitted statement and statutory priorities. If the programme fails, conversion to judicial liquidation carries forward verified liabilities.

Liability actions

Commissioners may bring civil actions against former directors, auditors and other liable parties, alongside avoidance actions. Criminal referrals are made where warranted. Settlements and major suits align with the programme and may require ministerial or committee authorisation.

Sales of assets, businesses and collateral

Disposals follow the approved programme and generally require ministerial authorisation (and committee opinion). Sales are transparent and competitive, including possible bridge-company transfers (*Marzano*). Liens attach to proceeds with their priority; purchaser protections mirror court-sale practice. Sector licences are co-ordinated with relevant authorities.

5.3 The End of the Liquidation Procedure(s)

Under Italian law, a liquidation ends when nothing remains to realise or distribute, statutory accounts are approved, and residual matters are addressed through CCII exit routes (or special laws for extraordinary administration).

Judicial Liquidation (Liquidazione Giudiziale)

Closure process

Once the *curatore* completes realisations (including avoidance recoveries) and final distributions per statutory priorities, closure may proceed. The receiver files the final report and account (*rendiconto*), with distribution statements. Creditors and the debtor may object within the statutory period; the delegated judge reviews objections and submits the file to the court, which issues the closure decree (*decreto di chiusura*) and discharges the receiver.

Typical closure grounds include:

- full or sufficient satisfaction within the priority scheme;
- estate exhaustion with pro rata payment of available funds; and
- technical closure where proportional recovery would be illusory.

Consequences

- Corporate debtors: upon completing formalities, the company is struck off the Companies Register and extinguished; proceedings end subject to statutory carve-outs (eg, actions against insurers or guarantors).
- Individual debtors: unpaid debts are not automatically discharged; *esdebitazione* requires statutory good-faith conditions to be met.
- Directors and third parties: closure does not bar actions against independently liable persons. Post-closure recoveries are handled via reopening or targeted distribution.
- Reopening (*riapertura*): if previously unknown assets emerge post-closure, the court may reopen to realise and distribute.

Contracts and litigation

Assumed contracts terminate or transfer per closing transactions; unassumed executory contracts lapse.

Pending estate litigation is concluded before closure where possible; otherwise, the court decides whether to preserve claims for later recovery or allow reopening.

Estate records are archived per court directions.

Extraordinary Administration (Amministrazione Straordinaria)

Closure or conversion

- Programme completion: commissioners implement the ministerially approved programme, complete disposals and distributions per verified liabilities, then submit final reports to MIMIT and the court. MIMIT issues a closure decree; commissioners are discharged.
- Programme failure: if objectives cannot be achieved or residual assets are insufficient, the Ministry may seek conversion to judicial liquidation. Verified liabilities and assets flow into the judicial process.

Consequences

- Closed in extraordinary administration: the company generally proceeds to strike-off unless a residual shell remains (rare). Commissioners are discharged, and records are archived.
- Converted to judicial liquidation: from conversion, judicial rules apply (receiver appointed; CCII liquidation governs). Prior extraordinary administration claim admissions guide the *stato passivo*, unless the court orders otherwise.

Residual matters

Unconcluded liability and avoidance actions are either wrapped up before closure, addressed via conversion, or handled through a post-closure framework. On closing or converting, sector regulators wrap up or transfer authorisations consistent with final asset disposition.

5.4 The Position of Shareholders and Creditors in Liquidation

Shareholders

Shareholders have a markedly limited role once liquidation opens. Control over the company's affairs shifts away from corporate bodies and into the hands of court-appointed organs in judicial liquidation, or to state-appointed commissioners under ministerial oversight in extraordinary administration. Shareholders cannot unilaterally direct management or frustrate the progress of the procedure, and any attempt to remove directors is confined to narrow grounds and subject to judicial or administrative controls. Equity interests are purely residual: distributions to shareholders occur only after full satisfaction of admitted creditor claims, and, in practice, equity recoveries are uncommon. Although certain corporate acts or consultations may formally persist in extraordinary administration, they do not permit shareholders to derail or delay the collective process.

Secured Creditors

Secured creditors preserve their pre-insolvency security interests – such as mortgages, pledges, liens or retention of title – but enforcement is funnelled into the collective proceeding. Upon the opening of judicial liquidation, a broad automatic stay bars the commencement or continuation of individual enforcement or precautionary actions against assets that fall within the estate. Within the procedure, secured creditors assert their claims through the verification process, and their priority attaches to the proceeds of the encumbered assets in accordance with statutory ranking rules. Post-opening interest is generally curtailed for the purposes of distribution, except for limited categories of secured or privileged claims. Set-off may operate if the statutory requirements are met and the set-off is duly disclosed and admitted in the verification phase. Even where specific statutory carve-outs allow limited continuation of certain executions, secured creditors must still participate in the *passivo* and cannot obtain preferential satisfaction outside the collective framework. Actions against third-party guarantors or solidary co-obligors are, as a rule, not stayed by the debtor's liquidation and may proceed according to the terms of the guarantee, without prejudice to the guarantor's subsequent subrogation or recourse within the procedure.

Unsecured Creditors

Unsecured creditors likewise must channel their remedies through the court-supervised verification of claims. Individual enforcement against estate assets is automatically stayed from the opening of the liquidation, and unsecured claims – once admitted –

participate in distributions according to statutory priorities and, absent preference, on a pro rata basis. Pre-insolvency measures such as attachments or retention of title endure only in a proceduralised form within the verification and distribution mechanics. Set-off is generally available where the legal conditions are satisfied and the right is properly asserted and verified in the *passivo*. As with secured claims, the collective character of the process precludes unilateral actions designed to disrupt, delay or circumvent the orderly satisfaction of creditors.

6. Cross-Border Issues in Insolvency

6.1 Sources of International Insolvency Law

Domestic Statutory Law

- The Italian Insolvency Code (CCII – Legislative Decree No 14/2019, in force from 2022) governs judicial liquidation, *concordato preventivo*, debt restructuring agreements (*accordi di ristrutturazione dei debiti*), certified turnaround plans (*piani attestati di risanamento*), court-supervised restructuring plans subject to homologation, and the negotiated settlement of the crisis (*composizione negoziata della crisi*).
- Special regimes for large enterprises (outside the CCII): extraordinary administration under the *Prodi bis* regime (Legislative Decree No 270/1999) and the *Marzano* regime (Decree-Law No 347/2003, as converted), for systemic large enterprise cases.

EU Regulations and Directives

- The EU Insolvency Regulation (Recast) 2015/848 contains rules on jurisdiction (centre of main interests, or COMI), recognition, applicable law, secondary proceedings, and cross-border co-operation within the EU.
- Directive (EU) 2019/1023 establishes preventative restructuring frameworks, early-warning tools, second-chance measures and efficiency enhancements. It is transposed in Italy mainly by Legislative Decree No 83/2022.
- Proposed Directive harmonising certain aspects of insolvency law (COM(2022) 702): political agreement was reached in 2025, with final adoption and Italian implementation pending. This Directive would address avoidance actions, pre-pack sales, creditor committees, simplified liquidation for micro-enterprises, and transparency.

Private International Law (Extra-EU)

- Law No 218/1995 (Italian Private International Law Act) contains the residual framework for the recognition/enforcement of foreign insolvency-related decisions and conflict-of-laws rules where the EU Insolvency Regulation does not apply.

International Standards and Best Practices

- UNCITRAL Model Law on Cross-Border Insolvency (1997) has not been enacted in Italy but is used as s persuasive reference in practice.
- INSOL International Principles and World Bank Guidelines are non-binding soft law informing co-operation, creditor co-ordination and transparency.

Judicial Practice and Professional Guidance

- Italian courts interpret and apply the CCII, the EU Insolvency Regulation and Law No 218/1995 in cross-border contexts, including regarding the recognition of foreign proceedings and stays of enforcement.
- Professional and administrative protocols (including Ministry of Justice guidance and local court practice directions) support the implementation of restructuring tools, particularly the *composizione negoziata della crisi*.

6.2 Jurisdiction

Under Italian law, cross-border insolvency jurisdiction is governed by Regulation (EU) 2015/848, and the CCII applies the same COMI framework. The debtor's COMI is the place where it regularly administers its interests in a manner ascertainable by third parties. For companies and legal persons, there is a rebuttable presumption that the COMI is at the registered office; for self-employed individuals, at the principal place of business; and for other natural persons, at the habitual residence. These presumptions can be displaced by objective, third-party-ascertainable factors, and the presumption does not apply where the relevant location was moved shortly before the filing. Jurisdiction is fixed at the moment the request to open proceedings is lodged, and is not affected by any subsequent shift in the COMI.

The opening of main proceedings at the COMI is automatically recognised across the EU; the effects of such recognition are provided by the law of the State of the opening (the lex fori concursus), rather than a standalone EU-level stay, subject to the Regulation's specific exceptions. Secondary proceedings may be opened only in a member state where the debtor has an establishment; they are territorially limited to assets located in that State and operate in co-ordination with the main proceedings.

6.3 Applicable Law

The EU Insolvency Regulation (recast) – Regulation (EU) 2015/848 – applies to public collective insolvency proceedings listed in its Annex A and opened on or after 26 June 2017. It applies in all EU member states except Denmark.

In terms of applicable law, except as otherwise provided in the Regulation, the law of the member state in which the proceedings are opened (the "State of the opening of proceedings") governs the insolvency proceedings and their effects (lex fori concursus). Article 7 (2) clarifies that this includes:

- the conditions for opening, conducting and closing the proceedings;
- their effects on the debtor and on creditors (including stays);
- the treatment and ranking of claims;
- avoidance actions; and
- the distribution of proceeds.

Key exceptions apply for, inter alia, third parties' rights in rem (Article 8), set-off (Article 9), reservation of title (Article 10), contracts of employment (Article 13), and the effects on pending lawsuits and arbitral proceedings (Article 18).

Annex A to Regulation (EU) 2015/848 identifies the national proceedings covered by the Regulation. The Annex was most recently replaced by Commission Implementing Regulation (EU) 2025/2073 with effect from 8 October 2025, and it continues to include the relevant Italian proceedings.

6.4 Recognition and Enforceability

In the EU context, Regulation (EU) 2015/848 governs collective, court-supervised insolvency and restructuring proceedings listed in Annex A and opened in a member state (excluding Denmark); the Regulation does not apply outside that scope – eg, third-country cases (including Denmark), procedures not in Annex A, or out-of-court tools.

Recognition and enforcement in Italy then follow Law No 218/1995.

As a rule, foreign civil judgments, including insolvency decisions, are automatically recognised if Article 64 conditions are met (foreign court's jurisdiction under Italian criteria, due process, no conflict with prior judgments, and no violation of Italian public policy); no prior application is needed for mere recognition. For coercive effects in Italy or if recognition is challenged, an exequatur before the *Corte d'appello* is required.

6.5 Co-Ordination in Cross-Border Cases

Italy has not adopted the UNCITRAL Model Law on Cross-Border Insolvency (1997). Instead, cross-border co-ordination is principally governed by Regulation (EU) 2015/848, which applies directly in Italy and provides tools for co-operation and communication among courts and office-holders in group cases, including the optional "group co-ordination proceeding". In addition, Italy's domestic Code of Corporate Crisis and Insolvency (D.Lgs. 14/2019) contains specific provisions on group insolvency designed to facilitate the co-ordinated handling of proceedings involving companies within the same corporate group.

6.6 Foreign Creditors

No special extended filing window applies to foreign creditors under Italian law. All creditors must lodge their proofs of claim by filing a petition before the verification hearing *stato passive*.

The receiver must give individual notice to known creditors with the date of the verification hearing and the filing deadline; if the creditor is abroad, notice may also be served on its Italian representative, if any.

In accordance with Regulation (EU) 2015/848, the opening of insolvency proceedings in Italy follows the

principle of "limited universality". Among its effects, the Regulation preserves rights in rem over assets located in other EU member states and allows secondary proceedings limited to the local estate, where appropriate.

7. Duties and Liability of Directors and Officers

7.1 Duties of Directors

There is no exhaustive list of directors' management duties under Italian law. Directors must diligently fulfil the duties imposed upon them by law and by the company's articles of association, with the standard of diligence required by the nature of their office and their specific competences. Directors are protected by the "business judgement rule", whereby a judge cannot pass judgment on the merits of a business decision unless it was taken with gross negligence or in breach of law.

Directors should always act in the best interest of the company, which includes the interests of shareholders, creditors and other stakeholders. However, a "shift" in directors' duties occurs under Italian law: in insolvency situations, creditors' interests prevail over shareholders' interests, and directors must take appropriate steps to preserve and maximise value for creditors.

Despite this shift in directors' duties, there is no specific statutory deadline within which directors must file for insolvency proceedings. However, directors who lack a genuine and well-grounded belief that the company can be rescued should file for insolvency proceedings in order to avoid personal civil and criminal liability.

7.2 Personal Liability of Directors

Directors and officers of Italian companies must act in the company's corporate interest, with diligence, informed oversight and asset preservation, especially as the business enters a state of crisis or insolvency. Courts defer to rational, informed business judgements but sanction breaches of law, by-laws or duties of vigilance and organisation (including the duty to maintain adequate organisational). While in distress, continuing operations or making payments that erode the asset base can trigger personal exposure.

Directors may also be held liable for failing to timely implement or commence an appropriate restructuring tool where the company was already in a state of crisis. What is typically sanctioned is not the crisis itself, but the fact that directors ignored, delayed addressing or concealed the crisis.

In judicial liquidation (*liquidazione giudiziale*), courts may order that all or part of the company's shortfall be compensated by all or some directors when three conditions are met:

- there is an asset shortfall rendering the estate insufficient for debts;
- the director committed mismanagement before the opening of proceedings (eg, failure to react to loss of capital, reckless continuation of business, inadequate systems/controls), beyond mere simple negligence; and
- the mismanagement contributed to the shortfall.

Damages are commonly quantified via the *differenza dei netti patrimoniali* method under Article 2486 of the Civil Code.

De jure and de facto directors may be held liable where they have exercised management powers in a continuous and significant way; courts have broad discretion in attributing liability and apportioning each director's contribution.

The receiver is exclusively entitled to bring directors' liability claims during insolvency, cumulatively asserting the company's action and creditors' action in one proceeding; individual creditors are generally divested of standing while the procedure is pending, subject to ordinary limitation rules (typically five years in related actions).

In principle, board members are jointly and severally liable; a director who timely records dissent and is without fault may avoid such liability, while non-executive directors remain exposed for failure to act in an informed manner or failure to intervene to prevent harmful conduct.

7.3 Duties and Personal Liability of Officers

Under Italian law, members of the board of statutory auditors (*collegio sindacale*) or the sole statutory auditor (*sindaco unico*) are not de jure directors and are primarily entrusted with oversight, not management. Therefore, they do not incur directors' management liability tied to insolvency proceedings unless they have in fact interfered with management as de facto directors through continuous and significant exercise of managerial powers, in which case they are treated as directors for liability purposes. Their core mandate is to vigilate – with professional diligence – on compliance with law and by-laws, on proper administration, and on the adequacy and effective functioning of organisational and accounting structures. They must also act "in an informed manner", using inspection and control powers. In addition, under the CCII, they must promptly flag any founded indications of crisis to the administrative body, solicit appropriate remedial measures (including, where appropriate, activation of the *composizione negoziata della crisi*), and monitor follow-up; failure to do so may trigger or aggravate personal liability.

However, statutory auditors remain personally liable for misconduct in the performance of their oversight duties, and may be held jointly liable with directors where damage would have been avoided through proper supervision. By way of exception, if they become aware of serious irregularities or harmful acts by management, they may incur civil liability if they fail to inform the shareholders' meeting, to convene it when necessary, or to activate statutory remedies within their remit (including escalating irregularities under the Civil Code procedure for court intervention). In judicial liquidation, the liquidator may cumulate the company's and the creditors' actions for damages against liable corporate officers, including statutory auditors, in a single proceeding.

The key statutory anchors include:

- Civil Code Articles 2403 (vigilance duties), 2406 (power to convene the shareholders' meeting) and 2407 (auditors' liability and joint liability with directors), and Article 2477 for S.r.l. (control bodies); and
- CCII Articles 3 (early-warning and adequate arrangements), 25-octies (obligations of control bodies to signal crisis) and 255 (consolidated standing of the liquidator in judicial liquidation).

In summary, the amendments:

- replaced "supervisory board members" with "statutory auditors";
- aligned duties and liability to Articles 2403–2407 of the Civil Code;
- clarified escalation powers to the shareholders' meeting/court;
- added the CCII duty to promptly flag crisis signals and to solicit remedial measures; and
- noted the curator's consolidated standing in insolvency.

7.4 Other Consequences for Directors and Officers

Professional (Civil) Sanctions

Personal disqualification and management prohibitions may be ordered against directors and officers where their conduct gravely departs from statutory duties, particularly in the vicinity of crisis or insolvency. Although such sanctions are typically applied as accessory measures to criminal findings, courts may also impose temporary precautionary bans pending trial. Illustrative grounds include:

- abusive continuation of loss-making activity that prejudices creditors;
- obstruction or non-cooperation with court-appointed bodies (liquidator, judicial commissioner); and
- preferential payments that frustrate the pari passu treatment of creditors.

The public prosecutor ordinarily requests these measures; the liquidator can report the facts and seek their application within the insolvency proceeding, and creditors may lodge complaints and support the request or join as civil parties. In judicial liquidation, the liquidator remains the exclusive plaintiff for civil liability claims for damages, while precautionary and disqualification measures are sought in the criminal forum. These consequences include disqualification from carrying on a commercial business and ineligibility to hold managerial or executive positions for a specified period, as well as interim prohibitions on serving in management roles. These measures oper-

ate alongside directors' civil liability actions, which are concentrated in the liquidator under the CCII.

Criminal Sanctions

Bankruptcy crimes apply in reorganisation and judicial liquidation contexts to directors, officers and de facto managers who commit the offences enumerated in Italian law. Core categories include:

- *bancarotta fraudolenta* (eg, concealment or dissimulation of assets, fictitious liabilities, ruinous means to obtain credit, preferential payments in fraud of creditors), which are punishable by imprisonment generally from three to ten years; and
- *bancarotta semplice* for negligent conduct such as imprudent expenses or failure to keep books, punishable by lesser terms; abusive resort to credit is also sanctioned.

Conviction typically carries accessory penalties, including disqualification from conducting a business and from holding management or control offices for up to ten years. These offences are prosecuted by the public prosecutor; the liquidator and creditors may file complaints and join the criminal proceeding as civil parties to seek restitution and damages.

8. Setting Aside or Annulling a Transaction

8.1 Circumstances for Setting Aside a Transaction or Transfer

In judicial liquidation (*liquidazione giudiziale*) and, mutatis mutandis, in other insolvency procedures (extraordinary administration *Marzano* and *Prodi bis*), transactions concluded close to the filing that leads to the opening of proceedings may be clawed back through the CCII claw-back regime. The Code distinguishes between categories with an "inverted burden" (revocable unless the counterparty proves it did not know of the debtor's insolvency) and categories that are revocable only if the receiver proves such knowledge.

The statutory look-back runs from the date the petition that resulted in the opening of liquidation was filed.

Revocable Unless the Counterparty Proves Lack of Knowledge of Insolvency (Article 166 (1) CCII)

- Acts for consideration where the debtor's performance exceeds by more than one quarter what it received, if carried out after the petition filing or within the year before it.
- Payments of due and payable monetary debts not made in cash or made by other normal means of payment, if carried out after the petition filing or within the year before it.
- Pledges, antichreses and voluntary mortgages granted after the petition filing or within the year before it to secure pre-existing unmatured debts.
- Pledges, antichreses and judicial or voluntary mortgages granted after the petition filing or within the six months before it to secure due debts.

Revocable if the Receiver Proves the Counterparty's Knowledge of Insolvency (Article 166 (2) CCII)

- Payments of liquid and due debts.
- Acts for consideration.
- Security interests granted to secure debts (including third-party debts) created at the same time, if carried out after the petition filing or within the six months before it.

Gratuitous Acts (Atti a Titolo Gratuito)

Acts made without consideration are ineffective against creditors if carried out after the petition filing that led to the opening of liquidation or within the two years before it, save for customary gifts and acts performed in fulfilment of a moral duty or for public utility, provided the liberality is proportionate to the donor's estate (Article 163 of the CCII).

Special Cases and Safe Harbours

- Payment of a matured bill of exchange enjoys a targeted protection: revocation may be directed against the party ultimately liable in recourse if its knowledge of insolvency is proven (Article 168 of the CCII).
- Separate rules address transactions affecting segregated estates for a specific business (*patrimoni destinati*) and acts between spouses/partners, with tailored inefficacy tests (Articles 167 and 169 of the CCII).

- Acts, payments and guarantees performed in execution of court-approved restructuring instruments are excluded within the limits expressly set by the CCII (eg, acts *in esecuzione* of an homologated plan/arrangement).

Time Limits

Claw-back actions under this Section are subject to statutory look-back windows (one year or six months, as above) and to an overall five-year cap measured from the date of the impugned act (Article 170 of the CCII).

Group Context

For groups, the CCII allows actions to declare ineffective intra-group transfers that shifted value to another group company to the detriment of creditors within five years before the petition; it also extends the ordinary look-back for certain Article 166 categories (two years for letters a) and b); one year for letters c) and d)) in the inter-company setting (Article 290 of the CCII).

Ordinary Revocatory Action

In addition to the CCII-specific regime, the receiver may also bring the ordinary civil revocatory action under the Civil Code to have prejudicial acts declared ineffective (Article 165 of the CCII, referring to Article 2901 of the Civil Code). This "actio pauliana" is a normal civil action under Italian law and is subject to a five-year limitation period. These rules calibrate look-back periods and knowledge tests, concentrate standing in the receiver, and carve out specific statutory safe harbours under the CCII.

8.2 Claims to Set Aside or Annul a Transaction or a Transfer

Under the CCII, insolvency avoidance actions are exercised centrally by the court-appointed receiver within the judicial liquidation proceeding; individual creditors generally lose standing once liquidation is opened. These actions typically concern onerous transactions, payments and security interests entered into during the suspect period prior to the filing that led to liquidation, subject to statutory presumptions and defences. Actions are brought before the insolvency court against counterparties and, where appropriate, subsequent transferees. Strict time limits apply: revocatory and ineffectiveness actions cannot be brought after three years from the opening of liquidation and, in any event, are time-barred five years from the relevant act. The purpose of these actions is to restore the estate and ensure par condicio creditorum.

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